

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

In re:

MICHAEL NORYS and
REBECCA NORYS,

Case No.: 9:14-bk-08896-FMD
Chapter 7

Debtors.

**DEBTORS' MOTION TO DETERMINE SECURED
STATUS OF USAA FEDERAL SAVINGS BANK AND TO STRIP
LIEN EFFECTIVE UPON OR OTHER COURT ORDER AS SPECIFIED THEREIN**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion, objection, or other matter without further notice or hearing unless a party in interest files a response within **30 days from the date set forth on the proof of service** attached to this paper plus an additional 3 days for service. If you object to the relief requested in this paper, **you must file your response with the Clerk of Court at United States Courthouse, 801 N. Florida Avenue, Tampa, FL 33602**, and serve a copy on The Dellutri Law Group, P.A., 1436 Royal Palm Square Blvd., Fort Myers, Florida 33919, any other appropriate persons within the time allowed.

If you file and serve response within the time permitted, the Court may schedule and notify you of a hearing or the Court may consider the response and may grant or deny the relief requested without a hearing. If you do not file a response within the time permitted, the Court will consider that you do not oppose relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COME NOW the Debtors, by and through undersigned counsel and pursuant to 11 U.S.C. § 506, Rule 3012 of the Federal Rules of Bankruptcy Procedure, Local Rule 3012-1, Administrative Order FTM-2009-1 and *McNeal v. GMAC Mortgage, LLC*, 2012 U.S. App. LEXIS 9589, *4-5, and hereby file this Motion to Determine Secured Status of USAA Federal Savings Bank and to Strip Lien Effective Upon or Other Court Order as Specified Therein and state as follows:

1. The Debtors filed a Chapter 13 Bankruptcy on July 31, 2014.
2. The Debtors case was converted to a Chapter 7 on September 26, 2014.

3. The Debtors own real property (the "Real Property") located at 4201 SE 2nd Avenue, Cape Coral, FL 33904, and more particularly described as follows:

Cape Coral Unit 10, BLK 248 PB13 PG27, LOTS 66 + 67

4. The Real Property is encumbered by two mortgages:

a. Ocwen Loan Servicing, account number 0947, holds the first mortgage recorded on July 2, 2003, at Plat Book 3979, Page 3645, Instrument No. 5877008, 19 PGS of the official records of Lee County, Florida and is owed the amount of \$185,294.00.

b. USAA Federal Savings Bank, account number 7492, holds a second mortgage recorded on December 16, 2005, Instrument No. 2005000174049, 6 PGS of the Public Records of Lee County, Florida, and has filed Claim No. 12 in the amount of \$158,923.82.

5. Based on Lee County Property Appraiser, the value of the Real Property is \$124,408.00.

6. Accordingly, USAA Federal Savings Bank's lien is completely unsecured.

7. Pursuant to the Eleventh Circuit decision in *McNeal*, as the lien is completely unsecured, the Debtors are entitled to strip the lien under § 506.

8. Debtors request the lien strip become effective upon discharge.

WHEREFORE the Debtors respectfully request that the Court enter an order:

- a) Granting the Motion;
- b) Determining the value of the Real Property to be the amount stated above;
- c) Determining that Creditor's claim shall be treated as an unsecured claim;
- d) Voiding the mortgage lien of USAA Federal Savings Bank effective upon discharge or other Court Order as specified therein; and
- e) Granting such other and further relief as the Court deems appropriate.

VERIFICATION

I, Michael Norys and Rebecca Norys, named as a Debtor in this case, verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief:

Signature: 
Michael Norys

Executed on (Date): 1-16-15

Signature: 
Rebecca Norys

Executed on (Date): 1-16-15

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished electronically via CM/ECF to the persons named below on January 20, 2015:

U.S. Trustee
Diane L. Jensen
Max A. Zaleski, Esq., Weinstein, Pinson & Riley, P.S.

-----And by Certified Mail to:

David Bohne, USAA, FSB President, 9800 Fredericksburg Rd., San Antonio, TX 78288-----

-----And by US First Class Mail to:

Michael and Rebecca Norys, 4201 SE 2nd Avenue, Cape Coral, FL 33904
USAA Federal Savings Bank C/O Weinstein, Pinson & Riley PS, 2001 Western Avenue, Ste 400, Seattle, WA 98121

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